

**MINUTES
ARKANSAS TEACHER RETIREMENT SYSTEM
BOARD OF TRUSTEES SPECIAL MEETING**

**Thursday, September 4, 2013
8:30 a.m.
1400 West Third Street
Little Rock, AR 72201**

ATTENDEES

Board Members Present

Dr. Richard Abernathy, Chair*
Jeff Stubblefield, Vice Chair*
Lloyd Black
Kathy Clayton*
Hazel Coleman*
Kelly Davis*
Candace Franks*
Wes Goodner, designee for Honorable
Charles Robinson*
Peggy Gram, designee for Honorable Charlie
Daniels*
Danny Knight
Bobby Lester*
Robin Nichols*

Board Members Absent

Dr. Tom Kimbrell
Deborah Thompson

ATRS Staff Present

George Hopkins, Executive Director
Gail Bolden, Deputy Director
Shane Benbrook, Internal Audit/Risk Mgmt
Kay Daniel, Director's Assistant
Laura Gilson, General Counsel
Amy Glavin, Administrative Assistant
Manju, Dir. Data Processing
Tammy Porter, Paralegal
Gaye Swaim, Operations Administrator

Guests Present

Jessica Middleton-Kurylo, Bureau of
Legislative Research*

Reporters Present

Mike Wickline, Arkansas Democrat Gazette

**via teleconference*

- I. **Call to Order/Roll Call.** Dr. Abernathy, Chair, called the Board of Trustees meeting to order at 8:30 a.m. Roll call was taken. Ms. Thompson and Dr. Kimbrell were absent.

- II. **Adoption of Agenda.**

Ms. Nichols *moved* for adoption of the Agenda. Mr. Lester *seconded* the motion and the Board *unanimously approved the motion.*

- III. **Executive Summary.**

- IV. **Approval of Rules After Public Comment Period by Consent Agenda.** Mr. Hopkins presented the rules that have completed the public comment period. The Board is required to adopt the rules again after the public comment period. During the time between when the rules were initially adopted at the July 26, 2013, Board of Trustees meeting and the end of the comment period on August 29, 2013, two minor modifications were made due to staff comments. Additionally, two rules were removed from this rule making process, Rule 7-4, Reporting Employee and Employer Contributions and Rule 8-2, Refund of Member Contributions. Both rules included a de minimis amount for a bench mark before collection of contributions and benefit adjustments for members. ATRS was attempting to set these de minimis amounts by rule making authority. The Bureau of Legislative Research did not agree with the Board's authority to set de minimis amounts, so the rules were pulled from the approval process. The ATRS Board may consider a law change for the 2015 session to give the Board authority to set these amounts.

Mr. Stubblefield *moved to approve the rules as changed by consent agenda.* Mr. Knight *seconded the motion,* and the Board *unanimously approved the motion.*

- A. **Rule 6-2 Reciprocity.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken.
- B. **Rule 6-12 College Plan.** This rule was modified to comply with changes required due to Act 607 and Act 337 in 2013. All the wording changes not required by the two acts were made for clarity and did not substantively affect the rule.
- C. **Rule 7-1 Calculation of Final Average Salary.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. Changes in this rule were also made to comply with three new acts. Inconsistent language was stricken. In addition, certain language was changed at the request of ATRS staff for greater clarity of the rule.
- D. **Rule 7-3 Employee (Member) Contributions.** This rule was changed during the public comment period to comply with new legislative Act 602. This act allows the Board authority to adjust the member contribution rate.

- E. **Rule 7-4 Reporting Employee and Employer Contributions.** Rule 7-4 was removed from the rulemaking process pursuant to comments from Bureau of Legislative Research (BLR).
- F. **Rule 8-2 Refund of Member Contributions.** Rule 8-2 was removed from the rulemaking process pursuant to comments from BLR.
- G. **Rule 8-20 Contract Buyouts/Court Ordered Payments.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Changes were made in the language to ensure compliance with Act 521 of 2013. The rule is also written to require the parties to provide ATRS with a certified copy of a settlement or court order to ensure proper controls are in place.
- H. **Rule 9-2 Age and Service (Voluntary) Retirement.** This rule was modified during the public comment period to comply with Act 966 of 2013 to provide authority to the Board for future benefits formula changes. Specifically, the rule references the Board's right to adjust contributory and noncontributory multipliers in future fiscal years.
- I. **Rule 9-4 Disability.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. This rule was modified to comply with Act 493 of 2013. The rule was changed during the public comment period to edit code cites that are no longer accurate. No substantive change to the rule was made.
- J. **Rule 9-8 Error Corrections and Collection of Overpayments.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. This rule was changed to comply with two new legislative acts. In addition, minor changes were made to reference the five year look back law and to clarify the interface of correction of errors and the member appeal process. Other minor changes were made for clarity and did not make material changes.
- K. **Rule 10-2 Employment of an ATRS Retiree by a Participating Employer.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. This rule changed to be consistent with two new legislative acts.
- L. **Rule 10-3 T-DROP.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas

code have been deleted and obsolete repealed revisions have been stricken. Changes were made to comply with Act 605 of 2013. Importantly, now ATRS has a uniform 1% reduction in the monthly deposit for all members entering T-DROP for each year of service for all members entering T-DROP on July 1, 2013 and thereafter. Other minor changes were made for clarity without substantive impact on the rule. The change during the public comment period was to allow new participants in cash balance accounts (CBAs) to access CBAs for a standard withdrawal as soon as the account is set up rather than having to wait a full quarter before a standard withdrawal may be made. This is a minor change for the benefit of members and arose by member requests after the Board Meeting. This should have minimal impact on ATRS staff.

- M. **Rule 11-1 Survivor Benefits.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. Additional language was added to clarify survivor benefits for a spouse versus a minor child. Language was added concerning authority of a guardian and rights concerning direct payment.
- N. **Rule 11-2 Lump Sum Death Benefit.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. Language was clarified to make it clear that eligibility for the benefit was based on law and not to all noncontributory and contributory members.
- O. **Rule 11-5 Lost Payees.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. Language was added based on Act 86 of 2013 concerning unclaimed property. Language was stricken based on changes in the law through Act 140 of 2013.
- P. **Rule 12-1 Protection of Qualified Trust Under IRS Code.** This rule was changed to comply with Act 45 of 2013, and to further implement Act 109 of 2013. The date for the reference of IRS code was updated to reflect a 2013 date. In addition, the rule now reflects that the Board may take action by resolution to eliminate rules no longer necessary to comply with IRS restrictions, limitations and requirements.
- Q. **Rule 13-1 Administrative Adjudication: Staff Determination and Appeals.** This rule was changed to reflect the uniform numbering that is being implemented in the ATRS rules. Direct quotes of the Arkansas code have been deleted and obsolete repealed revisions have been stricken. Act 45 of

2013 required changes to include that appeals are to be filed in Pulaski County Arkansas. In addition, Act 303 of 2013 implementation on manifest injustice led to a rule that ATRS Board has authority while hearing an appeal to implement a manifest injustice resolution as one of its options. Other clarification was made concerning the nature of administrative appeals and the date events occur in the appeal process to prevent issues that had arose in previous appeals. The rule was also changed to state that an appeal could be placed on a subsequent Board meeting and not necessarily "the next Board Meeting" to prevent a late decided appeal or a full agenda from impacting the appeal process.

- R. **Rule 15-1 Benefit Restoration Plan and Trust.** Act 109 of 2013 provides that ATRS should take action to minimize the impact of IRS regulations and for ATRS to take necessary action to pay all benefits earned by members. The benefit restoration plan trust is available to ensure that ATRS has an authorized method of paying all benefits due to a member while still protecting the tax qualified status of ATRS. The rule was prepared with the assistance of the ATRS actuaries and legal counsel.
- S. **Rule 16-1 Cash and Savings Help Program for Members.** After extensive meetings with the actuaries using extensive data and information on the 12,000 plus inactive vested members of ATRS a rule was drafted after consultation with the Board Chair to limit the first offering to inactive vested members who have exclusively noncontributory service. This recommendation is made after comparing the available funds and the financial benefit to ATRS within the inactive vested members while taking into consideration the additional staff loads that the program will place on benefits and counseling staff, reporting staff, and payroll staff. The inactive vested members include over 7,000 exclusively noncontributory members.
- a. The formula was developed to determine the present value of each member's actual benefit using a formula that takes each member's actual final average salary times years of service times the noncontributory multiplier (plus \$900 if the member has 10 or more years of service for the stipend) to determine an annual benefit. That annual benefit number is divided by 12 to reach a monthly benefit number. That monthly benefit number is multiplied by a factor table provided by the actuaries, using the member's age on the date of the member's application is received by ATRS, to participate in the CASH Program. That number becomes the present value of the member's annual benefit. That number is then multiplied by the suggested "discount rate" of 30%.
 - b. The 30% is a number developed after extensive input from the actuaries, ATRS staff and projecting funds available for the program. The Board may

use a different number, which would be easy to implement if desired by the Board.

- T. **Rule 17-1 Manifest Injustice.** The Board had an extensive discussion on manifest injustice. One item was clear that manifest injustice should be considered as a special and very limited remedy to address extreme injustice versus correction of a minor error. The Board also made it clear that the Board should not have dozens of manifest injustice claims on its agenda at every Board Meeting. The Board also made it clear that if a deadline is ever waived, only the Board would have such authority. Importantly, the Board suggested that perhaps a staff committee might act to review claims to ensure uniformity, neutrality, fairness and input from the legal department, the fiscal department, and the member benefit department.
- a. The Board also discussed giving the executive director authority to resolve a certain level of manifest injustice without requiring Board action. The executive director will work closely with staff to develop a proposed rule that incorporated these basic requirements and recommendations into the provisions. The Manifest Injustice Committee is composed of three members, the CFO, now Mitzi Ferguson, Director of Member Services, now Michael Ray and Chief Legal Counsel, now Laura Gilson, will serve as a three person committee to hear each and every manifest injustice referral. The executive director can take no action to resolve a manifest injustice referral unless the committee finds that a manifest injustice exists. The committee will also recommend a resolution to the executive director. If the executive director believes a manifest injustice exists and the committee fails to find that a manifest injustice exists, then the executive director may refer the matter to the Board.
 - b. As a suggested delegated authority limit for the executive director, a delegated amount of \$10,000 is suggested with the requirement that any amount over \$5,000 up to \$10,000 be allowed after input from the Board Chair. Additionally, each manifest injustice referral will be filed with a file number, a brief statement of facts, a statement on whether a manifest injustice was found, the resolution of any manifest injustice, and other details that would be presented to the Board at least twice annually. The purpose of the full report is to give the Board insight to issues typically facing members in this area, to give the Board information that might be needed to better direct the executive director and the Manifest Injustice Committee and to give the Board control over the manifest injustice process.
- V. **Other Business.**

VI. **Adjourn.**

Mr. Lester *moved to adjourn* the Board of Trustees Meeting. Ms. Coleman *seconded the motion*, and the Board *unanimously approved the motion*.

Meeting adjourned at 8:37 a.m.

George Hopkins,
Executive Director

Dr. Richard Abernathy, Chair
Board of Trustees

Amy Glavin,
Recorder

Date Approved